

C. GOOD STANDING

Under what circumstances may the department conduct a good standing review of an applicant, mortgage broker licensee, or exempt mortgage broker?

The department may conduct a good standing review when:

(1) Processing an application for a new mortgage broker branch office license.

(2) Processing an application for the appointment of a new or different designated broker.

(3) Processing a request for recognition as an exempt mortgage broker.

What does good standing mean?

For the purposes of the act and these rules, good standing means that the licensee or other person subject to the act demonstrates financial responsibility, character, and general fitness sufficient to command the confidence of the community and to warrant a belief that the business will be operated honestly, fairly, and efficiently within the purposes of the act and these rules. In determining good standing the director shall consider the following factors, and any other evidence relevant to good standing as defined in this rule:

1. Whether all fees due to the director have been paid in full.
2. Whether the licensee has filed and maintained the required surety bond or has had its surety bond canceled or revoked for cause.
3. Whether the licensee has maintained a designated broker in compliance with the act and these rules.
4. Whether the licensee has had any license, or any authorization to do business under any similar statute of this or any other state, suspended, revoked, or restricted within the prior five years.
5. Whether the licensee has been convicted of a felony, or a gross misdemeanor involving dishonesty or financial misconduct, within the prior seven years.
6. Whether the licensee is, or has been subject to, a cease and desist order or an injunction issued pursuant to the act or the Consumer Protection Act, or has been found through an administrative, civil, or criminal proceeding to

have violated the provisions of the act or rules, or the Consumer Protection Act.

7. Whether the director has filed a statement of charges, or there is an outstanding order to cease and desist against the licensee.
8. Whether there is documented evidence of serious or significant complaints filed against the licensee and the licensee has been notified of the complaints and been given the opportunity to respond. [CC060606: Concerns have been raised over this. The last part of the sentence is an attempt at compromise between DFI and the industry. The matter should be discussed further.]
9. Whether the licensee has allowed the licensed mortgage broker business to deteriorate into a condition which would result in denial of a new application for a license. For example, the licensee is insolvent in that the value of the licensee's liabilities exceeds their assets, or the licensee cannot meet its obligations as they mature, or the licensee's credit report shows adverse public records or judgments.
10. Whether the licensee has failed to comply with an order, directive, subpoena, or requirement of the director, or director's designee, or with an assurance of discontinuance entered into with the director, or director's designee.
11. Whether the licensee has interfered with an investigation or disciplinary proceeding by willful misrepresentation of facts before the director, or director's designee, or by the use of threats or harassment against a client, witness, employee of the licensee, or representative of the director for the purpose of preventing them from discovering evidence for, or providing evidence in, any disciplinary proceeding or other legal action.

When should an applicant or licensee receive notice from the department of their failure to meet a determination of good standing?

The department will notify the applicant or licensee that they have failed to meet the department's good standing requirement within ten days of the department's receipt of an application or request that requires a determination of good standing. See WAC 208-660-XXX.

What recourse does an applicant or licensee have when the department has determined that the applicant or licensee is not in good standing?

The applicant or licensee may request a brief adjudicative proceeding under chapter 34.05 RCW, the Administrative Procedure Act, to challenge the department's determination.

What department determinations can be challenged through a brief adjudicative proceeding?

The following department determinations can be challenged by an applicant or licensee requesting a brief adjudicative proceeding:

(1) Whether there is documented evidence of serious or significant complaints filed against the licensee and whether the licensee has been notified of the complaints and been given the opportunity to respond.

(2) Whether a licensee or person otherwise subject to the act has responded as directed to a report of examination.

(3) Whether a licensee has allowed the licensed mortgage broker business to deteriorate into a condition which would result in denial of a new application for a license by that mortgage broker.

(4) Whether a licensee has failed to comply with an order, directive, subpoena or requirement of the director, or his or her designee, or with an assurance of discontinuance entered into with the director, or his or her designee; and

(5) Whether a licensee has interfered with an investigation or disciplinary proceeding by willful misrepresentation of facts before the director or the director's designee, or by the use of threats or harassment against a client, witness, employee of the licensee, or representative of the director for the purpose of preventing them from discovering evidence for, or providing evidence in, any disciplinary proceeding or other legal action.

What specific sections of the Administrative Procedure Act are adopted by the director to administer brief adjudicative proceedings?

The director adopts RCW 34.05.482 through 34.05.494 to administer brief adjudicative proceedings requested by an applicant or licensee, or at the discretion of the director.

Who conducts the brief adjudicative proceeding?

Brief adjudicative proceedings are conducted by a presiding officer designated by the director. The presiding officer must have department expertise in the subject matter, but shall not have personally participated in the department's determination of good standing.

When and how will the presiding officer issue a decision?

Within ten days of the final date for submission of materials, or oral argument, if any, the presiding officer must make a written initial order.